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9 UNITED STATES DISTRICT COURT

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11 NORTHERN DISTRICT OF CALIFORNIA

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13 GANNA SHIROMI; SS, A MINOR BY
14 AND THROUGH HIS GUARDIAN AD
15 LITEM GANNA SHIROMI

16 Plaintiffs,
17 v.
18 CITY OF BERKELEY; BERKELEY DOE
19 POLICE OFFICERS 1-25;

20 Defendants.

21 CASE NO.:
22
COMPLAINT FOR DAMAGES

23
24 1. Violation of Decedent's Fourth
Amendment Rights 42 U.S.C §1983
(Excessive Force and *Monell*);
2. Battery; and
3. Bane Act Violation
4. Negligence;

DEMAND FOR JURY TRIAL

25 Plaintiffs, demanding a jury trial, bring this action against Defendants CITY OF
26 BERKELY, AND BERKELEY DOE OFFICERS 1-25, inclusive, for general, consequential,
27 compensatory, punitive and statutory damages, costs and attorneys' fees resulting from
28 defendants' unconstitutional and tortious conduct, and as grounds therefore allege as follows:

I. PARTIES

1. Plaintiff SS, A MINOR BY AND THROUGH HIS GUARDIAN AD LITEM GANNA SHIROMI is a individual and is a resident of the City of Berkeley California.

2. Plaintiff GANNA SHIROMI is an individual and is a resident of the City of Berkeley California.

3. Defendant City of Berkeley is a public entity established under the laws of the State of California.

4. Defendant DOE Berkeley Officers are individuals, who at all times relevant to this complaint, were employed by BERKELEY as police officers and were acting under the color of law as it pertains to this complaint. These DOE Officers are being sued in their individual and official capacities. The names of these DOE officers are not known, however, upon ascertaining their names, plaintiff will amend the complaint.

5. All defendants acted under the color of law as it pertains to this complaint.

II. JURISDICTION AND VENUE

6. This action is brought pursuant to 42 U.S.C. §§ 1983, 1988 and 12132 and the Fourth and Fourteenth Amendments to the United States Constitution, made applicable to Defendants through the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction over plaintiffs' claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a). This Court has further jurisdiction over plaintiffs' state law claims under 28 U.S.C. § 1337 as those claims form part of the same case and controversy under Article III of the United States Constitution.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events giving rise to this action occurred in the County of Alameda, which is located in this district.

III. STATEMENT OF FACTS

8. On May 27, 2017, at approximately 12:35 p.m., GANNA SHIROMI and her son SS who was five-years old at the time, were walking in the City of Berkeley and headed back to their home.

9. Shortly afterward, Defendant DOE Berkeley Police Officers approached the plaintiff and her son and started questioning her. At this time the plaintiff was holding SS in her arms.

10. The DOE Officers subsequently decided that the plaintiff needed to be evaluated for mental illness and attempted to remove SS from the plaintiff.

11. While removing SS from his mother's arms, the DOE Officers used enough force that caused the plaintiff and SS both to fall very hard to the ground, in which SS was injured and traumatized.

12. At the time of the incident, the plaintiff was pregnant. As a result of being thrown to the ground with her child, she suffered a miscarriage.

13. The plaintiff filed a tort claim with the City of Berkeley on November 27, 2017 pursuant to California Government Code §910, et seq. Plaintiffs' claims were subsequently rejected by BERKELEY on December 1, 2017.

IV. CAUSES OF ACTION

FIRST CLAIM

**(Violation of Fourth Amendment Rights 42 U.S.C §1983 (Excessive Force and *Monell*) – As
to All Defendants)**

14. Plaintiffs incorporate herein by reference the preceding paragraphs of this complaint as fully set forth herein.

15. All named Defendant Officers and Does 1-25, acting under color of law, used unreasonable and excessive force on May 27, 2017, by deliberately and intentionally, using force in a manner that caused both plaintiffs to fall to the ground, causing SS to be injured and traumatized and causing the plaintiff to suffer a miscarriage and to be traumatized, (i) that the plaintiffs had not committed any crime; (ii) that the plaintiffs were unarmed; (iii) that the plaintiffs did not pose any threat to the defendant DOE Officers, other officers or bystanders.

16. Defendant BERKELEY and DOE Officers deprived plaintiffs of their rights, privileges, and immunities secured by the United States Constitution by, among other things, not training, or inadequately training, its officers on how to deal with persons holding their children in their arms, or the handling of children. Defendant BERKELEY also has a widespread or longstanding custom and practice ratifying excessive force which, together with its lack of, or inadequate, training of its officers amounts to deliberate indifference towards the constitutional rights of individuals.

17. Because the above acts were performed in a malicious, and/or oppressive manner, plaintiffs are entitled to recover punitive damages from named Defendant DOE Officers in an amount according to proof.

SECOND CLAIM

(Battery – As to All Defendant Officers, Berkeley)

18. Plaintiffs incorporate herein by reference the preceding paragraphs of this complaint as fully set forth herein.

19. All named Defendant Officers and Does 1-25, acting under color of law, used unreasonable and excessive force on May 27, 2017, by deliberately and intentionally, using force in a manner that caused both plaintiffs to fall to the ground, causing SS to be injured and traumatized and causing the plaintiff to suffer a miscarriage and to be traumatized, (i) that the plaintiffs had not committed any crime; (ii) that the plaintiffs were unarmed; (iii) that the plaintiffs did not pose any threat to the defendant DOE Officers, other officers or bystanders.

20. Defendant BERKELEY is vicariously liable for the torts of its officers, who were acting within the scope of their employment with BERKELEY at the time of the incident pursuant to California Government Code §815.2.

21. Defendant DOE Officers' conduct as described above was willful, malicious, oppressive, knowing, and intentional; accordingly, plaintiff seeks an award of punitive and exemplary damages in an amount according to proof for damages caused by defendants' conduct.

THIRD CLAIM

(BANE ACT VIOLATION – As to All Defendant Officers, BERKELEY)

22. Defendant DOE Officers and DOES 1-25 while working as police officers for BERKELEY and acting within the course and scope of their duties, intentionally caused both plaintiffs to fall to the ground.

23. Defendant DOE Officers interfered with the plaintiffs' Fourth amendment rights to be free from the unlawful seizure of their person through the exercise of excessive force when they intentionally caused the plaintiffs to fall to the ground.

24. That upon observing the Defendant Officers exercising excessive force upon their person, the plaintiffs reasonably believed that if they exercised their right to be free from the unlawful use of excessive force upon their person, that the Defendant DOE Officers would commit violence against them.

25. That Defendant Officers injured the plaintiffs to prevent them from exercising these rights.

26. That both plaintiffs were harmed as a result of the violent acts imposed on them by the Defendant DOE Officers;

and

27. The Defendant DOE Officers' use of excessive force to prevent the plaintiffs from exercising their rights was a substantial factor in causing their harm.

28. Defendant BERKELEY is vicariously liable for the torts of its officers, who were acting within the scope of their employment with BERKELEY at the time of the incident, pursuant to California Government Code §815.2.

FOURTH CLAIM

(Negligence – As to All Defendants)

29. Defendants DOE Officers had a duty of due care to not engage in any conduct as it pertains to the use of force that would lead to the injury of a small child or to a pregnant woman suffering a miscarriage.

30. That this duty was breached by the DOE Officers when they used force in a manner that caused both plaintiffs to fall to the ground, causing SS to be injured and traumatized and causing the plaintiff to suffer a miscarriage and to be traumatized.

31. As a further actual and proximate result of said defendants' negligence, plaintiffs incurred damages, in an amount according to proof at trial.

32. Defendant BERKELEY is vicariously liable for the torts of its officers, who were acting within the scope of their employment with BERKELEY at the time of the incident pursuant to California Government Code §815.2.

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3 **V. PRAYER FOR RELIEF**

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5 Plaintiffs pray for judgment against defendants as follows:

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- 7 1. For compensatory damages and other special damages according to proof;
- 8 2. For general damages according to proof;
- 9 3. For punitive damages against all individual defendants according to proof;
- 10 4. The prejudgment interest at the legal rate according to proof;
- 11 5. For costs and reasonable attorneys' fees as provided by law; and
- 12 6. For such other relief as the Court may deem fit and proper.

13 **VI. JURY DEMAND**

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15 Plaintiffs demand a jury trial in this action.

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17 Respectfully submitted,

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19 LAW OFFICE OF STANLEY GOFF

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21 Dated: JUNE 1, 2018

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23 _____/s/ *STANLEY GOFF*

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25 STANLEY GOFF
Attorneys for Plaintiffs